

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL WALTER BERGER,
Plaintiff,
v.
JEFFREY BEARD,
Defendant.

Case No. [15-cv-0681-TEH](#)

ORDER DENYING MOTION TO
APPOINT AS NEXT FRIEND

Re: Dkt. No. 26

Plaintiff proceeds with a civil rights action. Defendant filed a motion for summary judgment and the Court is awaiting the opposition from Plaintiff. Plaintiff was formerly a state prisoner but has been released. While in prison he was being aided by another inmate. That inmate, who is still incarcerated at Correctional Training Facility-Soledad, seeks permission to be appointed as Plaintiff's "next friend" and litigate this case on Plaintiff's behalf.

In Whitmore v. Arkansas, the Supreme Court stated that "'next friend' standing is by no means granted automatically to whomever seeks to pursue an action on behalf of another." Whitmore, 495 U.S. 149, 163 (1990). To establish next friend standing, a putative next friend must show "(1) that the petitioner is unable to litigate his own cause due to mental incapacity, lack of access to court, or other similar disability; and (2) the next friend has some significant relationship with,

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1 and is truly dedicated to the best interests of, the petitioner.”
2 Coalition of Clergy, Lawyers and Professors v. Bush, 310 F.3d
3 1153, 1159-60 (9th Cir. 2002). The burden is on the putative next
4 friend to clearly establish the propriety of his or her status.
5 Whitmore, 495 U.S. at 164.

6 The inmate argues that he aided Plaintiff while in prison
7 and should continue. The inmate has failed to show that
8 Plaintiff is unable to litigate this case and that the inmate has
9 some significant relationship with Plaintiff.¹ The inmate has not
10 described how as a prisoner he will have more court access than
11 Plaintiff who is not incarcerated. The motion (Docket No. 26) is
12 DENIED. Plaintiff is reminded that he must file the opposition
13 to summary judgment by January 25, 2016.

14 This order terminates Docket No. 26.

15 IT IS SO ORDERED.

16 Dated: 01/16/2016



THELTON E. HENDERSON
United States District Judge

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28 ¹ The filing sent to the Court contains a declaration for Plaintiff
that was prepared by the inmate but was not signed by Plaintiff.